From: Lawrence D.W. Graves

**To:** Microsoft ATR **Date:** 12/17/01 12:30pm

**Subject:** comments on US v. Microsoft settlement

This e-mail is to communicate my strong opposition to the terms of the proposed settlement.

Let me state at the outset that I support government intervention in commercial spheres only within the exercise of its constitutionally-granted powers, and then only when market forces will not remedy the perceived problem. Further, I generally believe that not all monopolistic competition is bad, as there are many industries in which the traditional economic model with its "dead weight loss" is simplistic and ignores the benefits of reinvestment of the monopolistic prices in a manner that shifts the supply curve downward (the Schumpeter analysis). In short, please accept that I am a very reluctant advocate of government action in the anti-trust arena. Nevertheless, the Microsoft case is one where I feel that government intervention is not only appropriate now, but actually is long overdue.

Microsoft is a company that has achieved and perpetuated its market dominance by various unfair means, only a few of which were brought into issue and proven in the present case. Moreover, Microsoft shows absolutely no sign of changing its ways. If ever there were a case where structural relief was warranted, this is it.

I was dismayed at the judgment of Judge Jackson when he prescribed structural relief, but not in the way that Microsoft was: breaking the company into only two pieces (without soliciting the input of experts on this point) is clearly inadequate. The Microsoft juggernaut was able to succeed largely as a result of improperly exerting its control over one part of the software market (operating systems) and leveraging this into others (e.g., internet browsers, office suites). On the facts known to the industry, I would suggest a break-up into at least the following: (1) consumer operating systems, (2) corporate/server operating systems, (3) consumer applications, (4) corporate applications, (5) internet-related applications and services. With a prohibition against preferential treatment by and for any other companies spun out in the break-up, this would allow each of the new companies to act in an independently-rational way, rather than as now (where, for example, the MS Office suite is not ported to run on Linux, despite the clear market for it).

The proposed settlement does little to address the company's past misbehavior, and puts all of its past conduct out of the reach of future enforcement. Failing to pursue, now and to the utmost, the government's remedies will effectively immunize Microsoft against governmental sanction for any misbehavior for the next decade. I cannot imagine a worse result to consumers in the computer industry.

Please contact me if you have any questions regarding any of the foregoing comments.

## **LDWG**